

## REMARKS

Claims 1-41 are currently pending in the present application. Claims 27-41 are herein identified as withdrawn subject to reconsideration of the restriction requirement and clarification of this issue as requested herein. The Examiner previously required restriction to one of the following inventions under 35 U.S.C. § 121:

- I. Claims 1-26, drawn to a barrier, classified in class 296.
- II. Claims 27-41, drawn to a method of forming a barrier, classified in class 264.

The Examiner is again respectfully requested to reconsider his restriction requirement because each of the groups of Claims is sufficiently related that a serious burden would not be placed upon the Examiner to maintain the two groups of Claims in a single application. (See MPEP § 803). Claims 27-41 identifying methods to practice the invention provide sufficient common substance with those of the apparatus Claims in the particular area of art that a search regarding the provisionally elected and the non-elected claims should encompass the same art.

The Examiner noted that the application contains Claims directed to patentably distinct species of the claimed invention. Per the Examiner, Applicants must elect one of groups A, B or C for examination. Group A defined by the Examiner as shields includes Figures 1, 8 and 9-11. Group B defined by the Examiner as raised ribs includes Figures 2, 3, 4, 5, 11, 12 and 13-14. Group C defined by the Examiner as films includes Figures 6 and 7.

As previously noted in Applicants' amendment filed April 14, 2005, Applicants provisionally elect Group B with traverse. Applicants note each of independent Claims 1, 9, 18 and 23 were previously amended to further clarify the invention as a polymeric material vehicle barrier having at least one raised element. Applicants further note that each of the Figures of non-elected Group A, Figures 1, 8 and 9-11 disclose the present invention of a polymeric material vehicle barrier having at least one raised element. Applicants still further note that each of the Figures of non-elected Group C, Figures 6 and 7 also further define the polymeric material layer or layers for a polymeric material vehicle barrier having at least one raised element.

Applicants therefore re-assert that each of Claims 1-26 read on the invention of a polymeric material vehicle barrier having at least one raised element.

Applicants note Claims 1-26 which were amended in the previous response are herein identified as "previously presented". Claims 27-41 are herein identified as "withdrawn" in response to the Examiner's comments, pending review and reconsideration of the restriction requirement as further reiterated herein.

Applicants further note that the identification of Claims 27-41 as "withdrawn" is made with traverse. In a telephone conversation between the Examiner and Applicants' representative Thomas Krul on or about July 14, 2005, Applicants noted that following election with traverse, identification by Applicants of non-elected Claims 27-41 should more properly be noted as "original" until the restriction is made FINAL by the Examiner.

As noted in part in 37 C.F.R. §1.143:

*"In requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution, which invention shall be the one*

*elected in the event the requirement becomes final. The requirement for restriction will be reconsidered on such a request. If the requirement is repeated and made final, the examiner will at the same time act on the claims to the invention elected.”*

As also noted in 37 C.F.R. §1.142(b):

*“Claims to the invention or inventions not elected, if not canceled, are nevertheless withdrawn from further consideration by the Examiner by the election, subject however to reinstatement in the event the requirement for restriction is withdrawn or overruled.”*

In summary, it is Applicants' position that 1) the specific notification/election of any Claims is not identified to the Examiner until the Examiner's receipt of the election, therefore the 37 C.F.R. §1.142(b) requirements that withdrawal by the Examiner and by the election cannot be made until such receipt; 2) elected/non-elected claims are by default still pending a decision by the Examiner at the time Applicants make an election with traverse; 3) 37 C.F.R. §1.143 appears to require a traversed restriction requirement be repeated before it is made final, therefore it appears to be premature for an Applicant to identify claims as “withdrawn” at the time an Applicant makes an election; and 4) 37 C.F.R. §1.142(b) clearly states action is required by the Examiner to withdraw non-elected claims. Applicants respectfully request review of the above and clarification for future prosecution that Applicants at the time of making an election of species with traverse are required to identify non-elected claims as “withdrawn”.

## **CONCLUSION**

It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this Response is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: July 27, 2005

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